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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA – LAS VEGAS

DANNY J. HOREN, Individually and On Behalf of All Others Similarly Situated,

Plaintiffs,

v.

RIVIERA HOLDINGS CORP. a/k/a RIVIERA HOTEL AND CASINO; CASABLANCA EXPRESS; and LAS VEGAS PROMOTIONS,

Defendants.

Case No.:

CLASS ACTION

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF PURSUANT TO THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, ET SEQ.

JURY TRIAL DEMANDED

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INTRODUCTION

1. DANNY J. HOREN ("Plaintiff") brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of RIVIERA HOLDINGS CORP. a/k/a RIVIERA HOTEL AND CASINO ("RIVIERA"); CASABLANCA EXPRESS ("CASABLANCA); and LAS VEGAS PROMOTIONS ("PROMOTIONS") or jointly as "Defendants" in negligently and/or intentionally contacting Plaintiff on Plaintiff's cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"), thereby invading Plaintiff's privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

2. The actions alleged herein to have been undertaken by the Defendants were undertaken by each defendant individually, were actions that each defendant caused to occur, were actions that each defendant authorized, controlled, directed, or had the ability to authorize, control or direct, and/or were actions each defendant assisted, participated in, or otherwise encouraged, and are actions for which each defendant is liable. Each defendant aided and abetted the actions of the defendants set forth below, in that each defendant had knowledge of those actions, provided assistance and benefited from those

actions, in whole or in part. Each of the defendants was the agent of each of the remaining defendants, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and with the permission and consent of other defendants.

3. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. "Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA." *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

4. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that "[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that:

> [b]anning such *automated* or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12 (emphasis added); *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing

Congressional findings on TCPA's purpose).

5. Congress also specifically found that "the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call…." Id. at §§ 12-13. *See also*, *Mims*, 132 S. Ct. at 744.

6. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls similar to this one:

> The Telephone Consumer Protection Act … is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

8. Venue is proper in the United States District Court for the District of Nevada pursuant to 18 U.S.C. § 1391(b) because Plaintiff is a resident of the State of Nevada and Defendants are subject to personal jurisdiction in the County of Clark, State of Nevada as they conduct business there. Further, Defendant

RIVIERA is registered with the Nevada Secretary of State as a domestic corporation.

PARTIES

9. Plaintiff is, and at all times mentioned herein were, citizen and resident of the State of Nevada. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153 (39).

10. Plaintiff is informed and believes, and thereon alleges, that RIVIERA is, and at all times mentioned herein was, a corporation whose primary corporate address is in Winchester, Nevada.

11. RIVIERA is and at all times mentioned herein was, a corporation and is a "person," as defined by 47 U.S.C. § 153 (39).

12. RIVIERA is a casino operator that owns the Riviera on the Las Vegas Strip and the Riviera Black Hawk in Black Hawk, Colorado.

13. Plaintiff is informed and believes, and thereon alleges, that CASABLANCA is, and at all times mentioned herein was, a corporation whose primary corporate address is in Woodland Hills, California.

14. CASABLANCA is and at all times mentioned herein was, a corporation and is a "person," as defined by 47 U.S.C. § 153 (39).

15. CASABLANCA is a privately held travel company that provides promotional travel services to hotels and casinos.

16. Plaintiff is informed and believes, and thereon alleges, that CASABLANCA does business for some promotions as Las Vegas Promotions.

17. Plaintiff is informed and believes, and thereon alleges, that CASABLANCA was acting as the agent for RIVIERA, the principal, at all times relevant. In this capacity, Plaintiff is informed and believes, and thereon alleges, that CASABLANCA was authorized to act on behalf of RIVIERA to solicit business from and/or create legal relationships with third parties, such as Plaintiff.

18. At a minimum, CASABLANCA maintained apparent authority to act on behalf of RIVIERA, since Plaintiff reasonably believed that an agency relationship existed with RIVIERA and this reasonable belief was traceable to a manifestation of RIVIERA.

19. RIVIERA knowingly accepted the benefits of the TCPA violations alleged herein by receiving compensation from consumers solicited on behalf of RIVIERA by the agents of RIVIERA.

FACTUAL ALLEGATIONS

20. On or about September 28, 2013, RIVIERA and/or its agents CASABLANCA or PROMOTIONS contacted Plaintiff on Plaintiff's cellular telephone number ending in 6916 via an automatic telephone dialing system ("ATDS") as defined by 47 U.S.C. § 227(a)(1), using an "artificial or prerecorded voice" as prohibited by 47 U.S.C. § 227(b)(1)(A).

21. This ATDS has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

22. Upon answering Defendants' telephone call, Plaintiff heard muffled noise, and the call was disconnected moments later, indicating Defendants' use of an autodialer.

23. After Plaintiff received an autodialed call from telephone number (323) 892-2236, Plaintiff called the number back and was directly connected to an answering machine.

24. The message on the answering machine said the following:

> Thank you for calling Vegas Vacations. For complete package details, please visit us online at www.vegas229.com. If you'd like a customer service representative to call you back, please leave your name and number after the tone. And thank you again for calling Vegas Vacations.[1]

25. Plaintiff left a message to be called back in order to gather information.

26. Less than one hour later, at approximately 12:18 p.m., a live representative, who goes by "John," called Plaintiff on Plaintiff's cellular telephone from the number (328) 892-2236.

27. John informed Plaintiff that the first call to Plaintiff was from an autodialer, and that John hates using autodialers.

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[1] This message was transcribed by Plaintiff's counsel, Tara D. Newberry, while listening to the voicemail message connected to Defendant's telephone number (323) 892-2236.

28. During the call, John provided Plaintiff with John's direct phone line, (702) 852-1236.

29. John told Plaintiff that he places telephone calls like the one to Plaintiff from LAS VEGAS PROMOTIONS, a small office branch of CASABLANCA located in Las Vegas, Nevada.

30. John told Plaintiff the call was on behalf of RIVIERA to offer promotional rates on vacation packages in the next twelve (12) to eighteen (18) months.

31. John also informed Plaintiff that CASABLANCA is also a full service travel agent.

32. John provided Plaintiff with a website, www.vegas199.com, to visit for more information about the promotion RIVIERA was offering.

33. Plaintiff was told Defendants got his number from a VIP list containing Plaintiff's contact information.

34. At no time did Plaintiff add his name, or cellular phone number, to any of Defendants' VIP list/s.

35. At no time did Plaintiff enter into a business relationship with Defendants.

36. At no time did Plaintiff provide his cellular phone number to Defendants through any medium.

37. Upon information and belief, the purpose of these calls from RIVIERA or its agents CASABLANCA or PROMOTIONS was to solicit business from Plaintiff regarding hotel reservations at RIVIERA.

38. Upon information and belief, RIVIERA solicits and/or accepts customer leads provided by CASABLANCA to RIVIERA on behalf of RIVIERA.

39. RIVIERA or its agents CASABLANCA or PROMOTIONS contacted Plaintiff from telephone number (328) 892-2236 belonging to RIVIERA, CASABLANCA or PROMOTIONS.

40. The telephone number RIVIERA or its agents CASABLANCA or PROMOTIONS called was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

41. These telephone calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

42. Plaintiff did not provide Defendants prior express consent to receive calls to his cellular telephone utilizing an ATDS or artificial or prerecorded voice, pursuant to 47 U.S.C. § 227 (b)(1)(A).

43. These telephone calls by Defendants or their agent(s), violated 47 U.S.C. § 227(b)(1), except for the telephone call described in Paragraph 33.

CLASS ACTION ALLEGATIONS

44. Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated (the "Class").

45. Plaintiff represents, and is a member of the Class, consisting of:

> All persons within the United States who received any telephone call/s from Defendant or its agent/s and/or employee/s to said person's cellular telephone made through the use of any automatic telephone dialing system or with an artificial or prerecorded voice within the four years prior to the filling of the Complaint.

46. Defendants and their employees or agents are excluded from the Class. Plaintiffs do not know the number of members in the Class, but believes the Class members number in the tens of thousands, if not more. This matter should therefore be certified as a Class action to assist in the expeditious litigation of this matter.

47. Plaintiff and members of the Class were harmed by the acts of Defendants in at least the following ways: Defendants, either directly or through its agents, illegally contacted Plaintiff and the Class members via their cellular telephones by using an ATDS and/or artificial or prerecorded voice, thereby causing Plaintiff and the Class members to incur certain cellular telephone charges or reduce cellular telephone time for which Plaintiff and the Class members previously paid, and invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class members were damaged thereby.

48. This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class, and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional

persons as warranted as facts are learned in further investigation and discovery.

49. The joinder of the Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court. The Class can be identified through Defendants' records or Defendants' agents' records.

50. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact to the Class predominate over questions which may affect individual Class members, including the following:

a) Whether, within the four years prior to the filing of the Complaint, Defendants or their agents sent any artificial or prerecorded voice message to the Class (other than a message made for emergency purposes or made with the prior express consent of the called party) using any automatic dialing system to any telephone number assigned to a cellular phone service;

b) Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and

c) Whether Defendants and their agents should be enjoined from engaging in such conduct in the future.

51. As a person that received at least one autodialed call utilizing an ATDS without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

52. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class action, the Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendants will likely continue such illegal conduct. Because of the size of the individual Class member's claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein.

53. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

54. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendants to comply with federal and Nevada law. The interest of Class members in individually controlling the prosecution of separate claims against Defendants is small because the maximum statutory damages in an individual action for violation of privacy are minimal. Management of these

claims is likely to present significantly fewer difficulties than those presented in many class claims.

55. Defendants have acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION
NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.

56. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

57. The foregoing acts and omissions of Defendants constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

58. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class are entitled to an award of $500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

59. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.

60. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

61. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

62. As a result of Defendant' knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiffs and the Class are entitled to an award of $1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

63. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

Prayer For Relief

Plaintiff respectfully requests the Court grant Plaintiff and the Class members the following relief against Defendants, and each of them:

First Cause of Action for Negligent Violation of the TCPA, 47 U.S.C. § 227 Et Seq.

- As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1), Plaintiffs seek for themselves and each Class member $500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

- Any other relief the Court may deem just and proper.

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SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.

- As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiffs seek for themselves and each Class member $1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

64. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Dated: February 13 14th, 2014

Respectfully submitted,

By: ______________________

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SBN: 249203
CONNAGHAN|NEWBERRY
ATTORNEYS FOR PLAINTIFFS